

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Hector Ortiz

v.

Civil No. 12-cv-372-JL

Richard M. Gerry, Warden,
New Hampshire State Prison,

O R D E R

Before the court is pro se petitioner Hector Ortiz's motion for the appointment of counsel (doc. no. 3). Ortiz seeks an appointment of counsel, pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, to represent him in his petition for a writ of habeas corpus (doc. no. 1), filed pursuant to 28 U.S.C. § 2254.

"'[T]here is no constitutional right to representation by counsel in habeas corpus proceedings,' and [the Criminal Justice Act, 18 U.S.C.] § 3006A(a)(2) only requires appointment of counsel for a financially eligible person if 'the interests of justice so require.'" United States v. Yousef, 395 F.3d 76, 77 (2d Cir. 2005) (per curiam) (citation omitted); cf. DesRosiers v. Moran, 949 F.2d 15, 24 (1st Cir. 1991) (district court has discretion to deny motion to appoint counsel filed by indigent civil litigant unless counsel's appointment is necessary to avoid fundamental unfairness). The rules governing federal

habeas proceedings do not require counsel's appointment for an indigent petitioner, unless an evidentiary hearing is warranted. See Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts.

Here, Ortiz seeks counsel's appointment because he is indigent and believes his petition is meritorious. This case does not present any extraordinary circumstances at this time necessitating an appointment of counsel. Accordingly, an appointment of counsel to assist Ortiz in his § 2254 petition at this time is not required by the interests of justice.

Conclusion

The court denies the motion for an appointment of counsel (doc. no. 3), without prejudice to Ortiz refiling the motion if an evidentiary hearing is scheduled, or if he otherwise shows that the interests of justice and/or fundamental fairness warrant counsel's appointment.

SO ORDERED.



Landya McCafferty
United States Magistrate Judge

January 31, 2013

cc: Hector Ortiz, pro se

LBM:nmd